

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

-against-

JOSE BRITO,

Defendant.

**ORDER**

20 Cr. 63 (PGG)

JOSE A. BRITO,

Petitioner

21 Civ. 7572

-against-

UNITED STATES OF AMERICA,

Respondent.

PAUL G. GARDEPHE, U.S.D.J.:

On October 30, 2020, Defendant Jose Brito appeared before Magistrate Judge Ona T. Wang and pleaded guilty to unlawfully entering the United States after having been convicted of an aggravated felony and deported, in violation of 8 U.S.C. §§ 1326(a) and (b)(2). (Plea Tr. (20 Cr. 63, Dkt. No. 40)) This Court accepted his plea on January 7, 2021. (20 Cr. 63, Dkt. No. 46) On January 13, 2021, Brito was sentenced to 24 months' imprisonment. (20 Cr. 63, Dkt. No. 49)

On January 20, 2021, Brito filed notice that he appealed the judgment to the Second Circuit. (20 Cr. 63, Dkt. No. 51) On August 31, 2021, Brito filed a petition pursuant to 28 U.S.C. § 2255, which was terminated due to a filing error and re-filed on September 9, 2021. (20 Cr. 63, Dkt. No. 60; 21 Civ. 7572, Dkt. No. 1)

Because Brito's direct appeal is pending, the Court denies the present habeas motion without prejudice as premature. Although the Court is not, strictly speaking, prohibited

from adjudicating this motion while Brito's direct appeal is pending, see United States v. Outen, 286 F.3d 622, 632 (2d Cir. 2002), it is in the interest of judicial economy "to avoid confusion or waste of time resulting from having the same issues before two courts at the same time." United States v. Rodgers, 101 F.3d 247, 251 (2d Cir. 1996).

Dated: New York, New York  
September 16, 2021

SO ORDERED.

A handwritten signature in cursive script, reading "Paul G. Gardephe", written in black ink.

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Paul G. Gardephe  
United States District Judge